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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. [illegible]

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

Petitioner's Response to Respondent's Brief in Opposition to Petition for Writ of Certiorari.

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THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

Petitioner's Response to Respondent's Brief in Opposition to Petition for Writ of Certiorari.

I.

Introduction.

Respondents deny jurisdiction of this Court on the grounds that:

> "1. The Federal question was not duly presented to the Supreme Court of the State of California.
>
> "2. The record fails to show that the Federal issue was necessary to the decision of the Supreme Court of California." (Resp. Br. p. 2.)

Petitioner's shall establish in this response that the above claims of respondents are without foundation in reality and without authority in law.

II.

Response to Respondant's Brief in Opposition to Petition.

A. Petitioner's Record Shows Many Specific Instances Where the Federal Questions in This Case Are Presented.

1. In hearings before the Committee of Bar Examiners.

(a) Record on Appeal, Exhibit A—Pages 41, 42, 44, 45, 48, 49, 51 and 53. For example:

At page 42, in answer to the question "Mr. Konigsberg, are you a Communist?", (petitioner said) ". . . the right of political opinion is protected under the First Amendment and is binding on the states."

At page 49, petitioner affirmed: "Under those circumstances, the constitutional guarantee of free speech means nothing if it doesn't mean you can keep your views to yourself. . . ."

At page 51, petitioner told the Committee of Bar Examiners that they were among the leaders of the bar, and as such they "should be among the first to combat this notion that it is wrong to use a constitutional privilege . . . ."

(b) *Second hearing:* Record on Appeal, Exhibit A—Pages 112, 113, 119, 122, 125, 132. For example:

At pages 112-113, when the chairman of the Committee of Bar Examiners said "Mr. Konigsberg takes the position that he does not want to answer the question as to present membership in the party . . .," petitioner replied, ". . . I didn't say I didn't want

to. I answered it in the way I felt I could answer it; basing my answer on the guarantee of the First Amendment . . . and I feel that the position I am taking . . . places me with so many other citizens . . . who feel they must take this position as their part in defending our liberties against attack."

(c) *Fourth hearing:* Record on Appeal, Exhibit B—Pages 7, 12, 13, 14, 22, 23, 25, 26, 29, 33, 36, 37, 38, 40, 45, 51, 52. For example:

At page 7, petitioner told the Committee of Bar Examiners that their questioning him about his political views—when all other applicants for admission are not so questioned—was "a violation . . . of the equal protection clause of the 14th Amendment of the Constitution of the United States and Article I, Sections 11 and 12 of the California Constitution."

At pages 13-14, petitioner told the Committee that its act of refusing to certify him for admission to the bar without informing him of any findings of fact was "such an unreasonable act as to constitute both abuse of discretion and infringement of my rights under Article I, Section 1, of the California Constitution and under the Fourteenth Amendment of the Constitution of the United States."

At page 25, when the chairman was questioning him about the newspaper articles he had written, the petitioner, in declining to discuss them said: ". . . the material I wrote then I wrote as a working newspaperman . . . There is involved a question of freedom of the press . . ."

At page 45, petitioner declared : ". . . you are not empowered to inquire into a man's beliefs . . . It has no bearing on his qualifications to practice law."

2. In Petition to Review Denial of Application—To the Supreme Court of the State of California.

At pages 5-6, petitioner set forth among the facts constituting the basis for his petition:

"9. That the denial of the application . . . violates the rights of petitioner under the First Amendment to the Constitution of the United States.

"10. That the denial . . . violates the Fifth Amendment to the Constitution of the United States in that it deprives petitioner of liberty or property without due process of law.

"11. That said denial violates the 14th Amendment to the Constitution of the United States in that it is an attempt by the State of California to deprive petitioner of liberty or property without due process of law and denies petitioner the equal protection of the laws."

3. *Petitioner's Brief* to the Supreme Court of the State of California: *Pages 12 and 41.*

At page 12: "The Committee asked the applicant if he was a member of the Communist Party, and the applicant declined to answer the question primarily on the ground that it was invasion of his constitutional rights encompassed in the First Amendment to the Constitution."

At page 41: "At no time in the hearings was any formal statement of adverse information presented

to petitioner. It is submitted that the Committee erred in this, and by reason of this failure, the petitioner was denied due process in these proceedings."

4. *Petitioner's Reply Brief Before the Supreme Court of the State of California: Pages 3 and 12.*

At page 3: ". . . . in the Konigsberg case, the applicant deliberately, affirmatively and vigorously asserted that it was his solemn duty as a citizen to defend the Constitution by refusing to answer questions which invaded his fundamental Constitutional rights."

At page 12: "The petitioner asserted that these questions (concerning his political opinions) invaded his rights under the First Amendment to the Constitution and that under no circumstances was the information sought to be elicited by the Committee relevant to the issues at bar."

It is clear, therefore, that not only were the Constitutional issues raised—but that they were raised at the earliest possible time and at all stages of the proceedings before reaching this Court.

B. The Court Has Recently Granted Certiorari in a California Case Bearing on Closely Related Issues.

It is important to call this Court's attention to the further fact that the California Supreme Court, which divided 4-3 in refusing (without a written opinion) to review petitioner's case, is the very same court which divided 4-3 in the case of *Black v. Cutter Laboratories* (1955), 43 Cal. 2d 788, wherein this Court has recently granted a writ of certiorari. The key issue in the *Black* case is: May a citizen be denied the right to earn a living because of his political opinions and/or associations?

It is submitted that the basic issue in the instant case is parallel:—may a citizen be denied the right to follow the profession of law because the bar examiners do not approve of his political opinions or associations? The equally grave federal questions raised in this case should also be heard and determined by this Court.

C. Respondents' Own Position Is Predicated on the Very Federal Question the Existence of Which They Deny.

1. RESPONDENTS' ENTIRE INQUIRY INTO PETITIONER'S QUALIFICATIONS FOR THE PRACTICE OF LAW IN CALIFORNIA—AND ALL THEIR REASONS FOR DENYING HIM CERTIFICATION TO THE BAR—ARE IN THE REALM OF POLITICAL OPINION AND ASSOCIATION.

(a) *Newspaper Articles and Public Statements of Petitioner.*

Even a cursory examination of petitioner's Record on Appeal—containing the verbatim report of the four hearings before the Committee of Bar Examiners, which comprise all the "evidence" upon which respondents based their denial of certification—demonstrates the full truth of the above conclusion. For, aside from the few preliminary questions relating to petitioner's education and employment, respondents asked not a question outside the realm of political opinion or association.

Added proof is offered by this fact: while respondents at no stage in the proceedings presented petitioner with a definite statement of "charges" against him or of the reasons for their denying him certification to the bar, we may reasonably infer from their arguments that their sole grounds for denying him certification were: (See Resp. Br. pp. 5-9) (a) The political, social and economic opin-

ions expressed by petitioner in newspaper articles; (b) Alleged past membership in a proscribed organization; (c) Failure to adequately deny advocacy of force and violence as a means of overthrowing the government of California and of the United States; (d) Opposition to the California Committee on Un-American Activities. Yet respondent insists that the beliefs and opinions of petitioner were not the basis of its decision to deny him admission to the bar.

Further corroboration of the complete political nature of respondents' inquiry into petitioner's moral character is evidenced by their insistance that he elaborate on his present opinions of the political, social and economic subjects discussed in the newspaper articles written some years earlier. (Resp. Br. pp. 7, 9.)

From an entire group of some 52 articles covering varied subjects, respondents selected for particular emphasis in their opposition brief the one which was critical of the Supreme Court's decision denying certiorari in *Lawson v. United States*, 339 U. S. 934. Respondents fail to mention that when he wrote this article, petitioner was a working newspaperman, and they fail also to mention that petitioner requested that the hearings before the State Bar be reopened so as to permit him to clarify any misunderstanding this article may have created concerning his attitude toward the Supreme Court of the United States and its role in our democratic society. (Pet. Rep. Br. p. 14.) This request was denied.

To suggest that criticism of any department of government disqualifies the critic for membership in the State Bar flies in the face of all traditions upon which our democratic society is based. More vigorous disa-

greement with courts and decisions of our courts have been expressed by many persons both lawyers and non-lawyers without raising questions as to their loyalty or fitness as members of the Bar.*

At page 22 of their Brief, Respondents quote from one of petitioner's newspaper articles written in July, 1950:

> "To consider loyalty to America as identified with loyalty to Truman, Dulles and U. S. Steel is, to me, the ultimate in sacrilege. . . . Loyalty to America, in my opinion, has always meant adherence to the basic principles of our Constitution and the Declaration of Independence—not loyalty to any man or group of men. Loyalty to America means belief in and militant support of her noble ideals and the faith of her people."

How such a philosophy of loyalty to our country renders a citizen unfit for admission to the Bar is unexplained by respondant; yet the State Bar cites this as proof of petitioner's unfitness.

Thus we have in substance** the evidence which respondents declare (at p. 5 of their Brief) was "most directly relevant to Committee's determination that petitioner had failed to establish that he was qualified for admission to the Bar * * *." If these words mean anything, they mean that because petitioner held the views referred to in

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*For example: ". . . one's rights to life, liberty or property are subject to the effect of such variable factors as crooked lawyers, crooked witnesses . . . crooked judges . . . biased juries." Jerome Frank, *Courts on Trial* (p. 62), Princeton U. Press, Princeton; N. J., 1949. See also, Prof. Fred Rodell, *Nine Men*, Random House, N. Y., 1955. See also newspaper comment of many distinguished public officials and leading lawyers in the southern part of the United States relating to the so-called desegregation decisions.

**See also paragraph (b) below.

the preceding paragraphs, respondents denied him admission to the bar. Yet, astonishingly in the face of this respondents find it possible to say, at page 17 of their Brief:

> "Thus, . . . is the record devoid of any indication that petitioner's political, social and economic views were considered by the Committee * * *."

Petitioner contends that respondents, by themselves grounding their denial of his application for admission to the bar on his alleged political opinions and associations, have conceded the federal issue in this case which warrants the granting of the writ of certiorari by this Court.

(b) Alleged Membership in an Unpopular Political Party or Association.

As part of the "evidence most directly relevant to the Committee's determination," respondents (Resp. Br. p. 9) list the alleged identification of petitioner's presence at Communist Party meetings—and assert (Resp. Br. p. 16) that "it is well-established that the Communist Party, and a large portion of its members, advocate overthrow of the government by force and violence * * *."

Even, for purposes of this brief, assuming the truth of the allegations concerning petitioner's political associations, a fundamental constitutional fallacy is committed by respondents in their reasoning and in their action in this case. They argue, in effect, that since the right to practice law is a privilege (a question we shall discuss below), it can be denied to any person who, in the exercise of rights under the First Amendment, was or is associated with organizations condemned by Congressional

or state legislative committees. They apparently argue the State can require applicants for admission to the Bar to refrain from activities protected by the First Amendment. They ignore the fact that in *United States v. Dennis*, 341 U. S. 494 the Supreme Court made it clear that the activities of each individual must be carefully scrutinized to determine whether or not the activities involved were outside the protection of the First Amendment. It is thus apparent that individual activity concerning alleged subversive organizations is, at least *prima facie*, activity guaranteed and protected by the First Amendment and lacking overt unlawful acts, may be engaged in by anyone.

While respondents assert that "a large portion of its (the Communist Party's) members advocate, etc." (*supra*) —at no point in their Brief, and at no point in the entire proceedings, do respondents charge that petitioner has personally advocated any such acts, or that he had committed any such overt acts, nor do they offer any evidence that he had knowledge that such was the purpose of the Communist Party. (See *Wyman v. Updegraff*, 334 U. S. 183). As a matter of fact the evidence adduced at the hearing clearly indicated no improper actions were taken by petitioner or any member of the group to which he is alleged to have been a part. [Rep. Tr. pp. 85-86.]

2. Cases Relating to Political Tests for Public Employees Are Not Applicable to Qualifications for Admission to the Bar.

Respondents declare that under the principles established in the cases of *Garner v. Bd. of Public Works of Los Angeles*, 341 U. S. 716, 720 and *Adler v. Bd. of Education*, 342 U. S. 485, 493, "California could prop-

erly require every applicant for admission to the Bar to disclose his past or present membership in the Communist Party and summarily refuse to admit any applicant who refused to make this disclosure." (Resp. Br. p. 20.) In taking this position, respondents commit two major fallacies:

First, they equate the practice of law with public employment. This is false. A public employee is responsible to a governmental body, is paid a salary from tax funds, and must carry out the orders of his superiors in the governmental organization. A lawyer is an officer of the court, a member of a free and untrammelled bar composed of persons whose duty it is to defend the rights of all the citizens of a community regardless of their economic, social or political views—and often against the attacks of public officials.

Underlying the whole of respondents' argument, and the justification for both its procedure and its final conclusion, is the thesis that admission to the practice of law is but a naked privilege. From such an assumption flow the propositions that the granting and withholding of the privilege are subject to the plenary power of the state and that the applicant has no right or interest entitled to constitutional protection. It is petitioners' position that neither respondents' thesis nor the propositions which it engenders are consistent with authority or the principles of our society.

In *Ex parte Garland*, 71 U. S. 333; 18 L. Ed. 366, and *Cummings v. Missouri*, 71 U. S. 277; 18 L. Ed. 356, the court held that the right to practice law is encompassed within the "certain inalienable rights" to "life, liberty and the pursuit of happiness" which lie at the root of "our

political institutions." Subsumed under the pursuit of happiness is the concept that "all avocations, all honors, all positions are alike open to everyone." So substantial is this right that deprivation of it for past conduct is, and has historically been recognized as, punishment—and "can be in no otherwise defined." (*Cummings v. Missouri*, 71 U. S. at 321, 322, 18 L. Ed. at 362.) The right may therefore not be taken from an admitted attorney through disbarment or suspension or from a prospective one by establishing "qualifications" except in accordance with the limitations upon governmental power prescribed in the constitution. (*Ex parte Garland*, 71 U. S. at 378, 379, 18 L. Ed. 370.)

So interpreted, the *Cummings* and *Garland* cases have vitality today. They have been held to define, for lawyers as well as other vocations, the right to pursue a chosen calling as "part of the right to happiness and liberty basic to our system." And this right, by nature as well as in degree of constitutional protection, rises superior to public office just as the right to practice law is superior to the right to a particular retainer. (*Bailey v. Richardson*, (C. A., D. C.), 182 F. 2d 46, 60.)

A denial of the right to practice law is a judicial act and that denial may constitute a deprivation of "life, liberty or property" substantial enough to invoke the due process of law clause of the Fourteenth Amendment. (*Re Summers*, 325 U. S. 561, 89 L. Ed. 1795.) Summers asserted "a present right" to admission to the bar of Illinois. Upon denial of his right by judicial order he obtained review before the United States Supreme Court on a writ of certiorari asserting that the denial deprived him of liberty and property without due process. Surely had his right to admission been a mere naked privilege,

he could not have invoked, successfully for purposes of obtaining review, the due process clause of the Fourteenth Amendment.

Moreover, the Court in *Summers'* case held that the assertion of the right to practice and its denial by judicial order of the state court constitute a "case" within the meaning of Article III of the federal Constitution.

The second significant error committed by respondents is their ignoring of the important fact that the force of the decision in the *Garner* and *Adler* cases was considerably weakened by the later decision in *Wyman v. Updegraf*, 334 U. S. 183, 97 L. Ed. 216, 222. So that even granting, for the sake of discussion, that public employment and the practice of law are comparable, respondents' arguments cannot have the effect they intend.

For in the *Updegraf* case the court struck down as arbitrary and offending due process an exclusion from public office of persons for past organizational membership regardless of *scienter*. In asserting the operation of constitutional protection for public employees against an assertion of arbitrary power, the court in effect questioned the validity of respondents' action here. For the inquiry directed to petitioner was no less a loyalty oath than that involved in *Updegraf*. Petitioner declined to answer as did the public employees in that case. The latter were ordered discharged because of their refusal; petitioner is excluded for his. There is in this record at least the same lack of *scienter* as in *Updegraf*. Indeed this record is stronger in that petitioner affirmatively denied advocating violent overthrow of the government. He is as much subjected to "arbitrary or discriminatory" exclusion as were the educators in *Updegraf*.

In *Updegraf*, the Court affirmed that ". . . constitutional protection does extend to the public servant where exclusion is pursuant to a statute patently arbitrary and discriminatory." (344 U. S. 183, 192.) Certainly then the arbitrary and discriminatory exclusion of petitioner by action of a state bar committee is as constitutionally offensive.

3. RESPONDENTS ASSERT UNREASONABLE REQUIREMENTS.

Respondents assert that in view of "petitioner's refusal to amplify his unsupported declaration that he did not advocate overthrow of the government . . . the Committee could constitutionally determine that he had not established his qualification for admittance to the Bar . . ." (Resp. Br. pp. 22-23.)

Petitioner does not think it necessary, in reply, to prove to this Court the impossibility of "proving a negative" and the consequent unreasonableness—from both a logical and a constitutional basis—of conditioning admission to the bar on such "proof."

Despite this difficulty, petitioner insists that respondents' charge that he refused "to amplify" his declaration that he did not advocate overthrow of the government by force and violence is untrue—for petitioner did present substantial evidence, both direct and indirect, of the truth of his avowal of non-advocacy of force and violence. And in doing so, he successfully bore the burden of proof in this matter—though being required to bear such burden was a violation of his constitutional rights. [Record on Appeal, Ex. B, pp. 10-12; Pet. Br. pp. 34-39.]

First, petitioner desires to call this Court's attention to the repeated instances throughout the proceedings of his

disavowal of force and violence. [See, for example, Record on Appeal, Ex. A, pp. 41, 42, 96.]

Secondly, there are examples of affirmative statements—not one of which can be said to be self-serving since they were all published before petitioner was even a law student—in which petitioner opposed the doctrine of force and violence.

1. A newspaper article entitled "Force and Violence" written by petitioner, in which he states:

> "It is vehemently asserted that the advocacy of force and violence is a danger to the American government and that its proponents should be punished. With this I agree. Such advocacy is un-American and does undermine our Democratic processes. Those who preach it should be punished." (California Eagle, May 25, 1950) [See R. p. 95].

2. The closing sentence in the statement before the Tenney Committee (quoted by respondents at page 9 of their Brief, as evidence of petitioner's moral unfitness), in which petitioner—after vigorously opposing that committee asserts: "I pledge my word to use every *democratic* means to defeat you." Certainly here is no indication of advocacy of force and violence.

3. Statement written by petitioner for U. S. Army Orientation Program, during service in World War II, in which he states:

> "I want the United States of America to be a mighty democratic nation . . . . I know that democracy can be lost . . . I have learned that if fascism comes here I myself will be to blame . . . if I have not done everything in my power to prevent it . . . I feel personally responsible for my country's fate. I want to help shape America's future." [Ex. A, pp. 98-99.]

Finally, as part of the indirect evidence in this case, that petitioner does not believe in advocacy of the overthrow of our government by force and violence, he submits the affirmative evidence offered in the letters from over 40 responsible citizens of his community who were intimately acquainted with him and his work over a period of 15 years or more. (See Pet. for Writ of Certiorari, pp. 10-13, for examples of these testaments.) Petitioner submits that the strong evidence of good moral character and good citizenship offered in these letters is simply inconsistent with the character of one who would be guilty of any criminal intents or acts, let alone advocacy of force and violence.

It should also be noted that respondents' assertion, that "their (the letters) persuasiveness was limited since none of them were directed to, or showed any knowledge of, the specific matters causing the Committee to have doubts concerning petitioner's qualifications . . . ." (Resp. Br. p. 10), can mean only that respondents wanted only declarations concerning petitioner's political opinions or associations. Another instance of their persistent concern solely for the forbidden realm of ideas—belieing again claims that the committee did not consider this realm in their deliberations.

4. This Case Is Distinguishable From the Anastapolo Case.

It is in order, at this point, to take note of respondents' conclusion that "petitioner has, at the most, done no more than re-present the issues raised in *In re George Anastapolo* (Ill. Sup. Ct. 1914), 348 U. S. 946, 121 N. E. 2d 826, and there determined by this Court not to present a substantial Federal question." (Resp. Br. p. 24.). Petitioner insists, and this analysis plus the total record makes abun-

dantly evident, that there are fundamental differences between the facts and the issues raised herein and in the *Anastapolo* case—particularly petitioner's strong affirmative proof of faith in democratic principles and opposition to use of force and violence in our democratic system. Furthermore as set forth elsewhere in this response new constitutional questions have been raised by both parties to this proceeding.

Respondents here concede that they "wholeheartedly agree with petitioner that one's political, social and economic beliefs are not, and should not, be a test for admission to the Bar." (Resp. Br. p. 15.) Later they affirm that they "would be among the first to denounce any state which refused to admit a qualified applicant to the Bar because his social, economic or political views deviated from those of the examining commitee." (Resp. Br. p. 16.) Yet our analysis here proves conclusively that respondents have committed the very acts they thus condemn. Petitioner asserts that in conceding the above position—the very position for which petitioner has been contending throughout these proceedings—respondents have conceded both the jurisdiction of this Court and we submit the ultimate decision in this case.

D. The Federal Question Was Properly Presented in the State Court.

Respondents insist that "the Federal question was not duly presented to the Supreme Court of the State of California." (Resp. Br. p. 2), and that petitioner's brief before that court "completely failed to raise or discuss any constitutional issue . . . ." (Resp. Br. p. 5.) Petitioner contends that his analysis of the facts and issues in this case, presented above, leads inevitably to the conclusion

that respondents err on both counts: he raised constitutional issues, and they were duly presented to the Supreme Court of the State of California.

Since the conclusion is inescapable that constitutional issues were implicit in every point raised by petitioner below, the burden of respondents' argument is only that petitioner did not raise or present the constitutional issues underlying his case in the specific language or form which they consider to be required? If so, then respondents err again—for the Supreme Court has established the rule that no mandatory language or form of presentation is essential.

Simply stated, the rule is that in framing the federal question for presentation to the state court, the litigant is not bound to follow any particular form of words or phrases. It is essential only that he bring the federal claim and the grounds therefore to the state court's attention with fair precision and ". . . if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented." (*New York ex rel. Bryant v. Zimmerman*, 278 U. S. 63, 67.)

Petitioner contends that an objective appraisal of his brief here and of his total record demonstrates that his case is "on all fours" with this rule.

In addition to stating that petitioner failed to assert a federal right respondents seem to infer that petitioner failed to call the state court's attention to the proper constitutional amendment appropriate to this case, and that he thereby waived his right. (Resp. Br. p. 1,)

The law is too well-established to require extended documentation that constitutional rights are not easily

lost (if at all) under such circumstances. Even reliance on the inappropriate constitutional clause is not fatal to the cause. See *Braniff Airways v. Nebraska State Board,* 347 U. S. 590: Here appellant relied on the "commerce clause" and did not specifically claim protection under the due process clause of the Fourteenth Amendment, and the Supreme Court held that the federal question was sufficiently presented.

With respect to this question, a recent decision of this Court is very much in point. In *Quinn v. United States,* 349 U. S. 155, the plaintiff in an appearance before the House Committee on Un-American Activities had refused to answer questions concerning his political associations, and in doing so relied on the First and Fifth Amendments. The government argued that *Quinn's* references to these constitutional amendments were inadequate to invoke them. This Court held that:

> "It is agreed by all that a claim of the privilege does not require any special combination of words. Plainly a witness need not have the skill of lawyer to invoke the protection of the Self-Incrimination Clause. If an objection to a question is made in any language that a committee may reasonably be expected to understand as an attempt to invoke the privilege, it must be respected both by the committee and by a court."

and that:

> ". . . the fact that a witness expresses his intention in vague terms is immaterial so long as the claim is sufficiently definite to apprise the committee of his intention. As everyone agrees, no ritualistic formula is necessary in order to invoke the privilege."

E. The Federal Issue Was Necessary to the Decision of the Supreme Court of California.

The second of respondents' grounds for denying the jurisdiction of this Court is that:

> "2. The record fails to show that the Federal issue was necessary to the decision of the Supreme Court of California." (Resp. Br. p. 2.)

and that

> ". . . there is every indication that the California Supreme Court's decision was based on non-Federal grounds." (Resp. Br. p. 13.)

Respondents base their erroneous claim on the fact that *they told* the California Supreme Court there was no federal question in the case, that *they did not consider* constitutional issues in deciding not to certify petitioner for admission to the bar. They emphasize that they

> "*specifically stated* (to the California Supreme Court) that no evidence of petitioner's social, political or economic views was considered in their determination . . . The decision of the California Supreme Court therefore necessarily determined that, apart from any evidence of political, social or economic beliefs, there was sufficient evidence in the record to sustain the Committee's determination." (Resp. Br. p. 17.)

Since the Supreme Court presented no written opinion stating the grounds on which its decision was based, clearly such argument by respondents is without foundation in fact.

Respondents' further assertion that "There is every indication that the California Supreme Court's decision was based on non-federal grounds" is equally without foundation.* Again one may well ask the basis of this contention since there was no written decision.

If we are to speak of "indications" of the grounds upon which the California Supreme Court's decision was based, then petitioner may reasonably claim that there are many more indications that that court could not and did not avoid consideration of the federal questions presented to that court.

First, respondents cannot escape the significance of the fact that that California court was divided 4-3 in declining to review this case.

Secondly, such non-federal questions as are referred to by respondent are all so interwoven with federal questions as to make division impossible. No fair review of the total record here can escape the conclusion that in view of the extent to which the federal questions dominate this case, the California Supreme Court could not avoid considering the relevant federal questions.

In this connection it should be noted that there is no recorded California case in which a person was denied

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*A further instance of the lack of support in the record for assertions made by respondant is to be found in the bald statement that petitioner "made it clear that he did not consider Russia as having a totalitarian form of government but that the United States did." (Resp. Br. p. 10.) Nowhere in the record can any such statement be found.

admittance to the Bar by reason of his political opinions. All previous recorded cases dealt with conduct involving moral terpitude of a criminal nature.

But even if we assume for purposes of argument that non-federal issues are involved, if no opinion is delivered by the state court or the grounds given for the opinion are not clear and the court does not find adequate non-federal grounds in the record to support the decision below

> "it will be presumed that the state court based its judgment on the law raising the Federal question, and this Court will then take jurisdiction."
>
> *Klinger v. Missouri,* 13 Wall. 257, 263;
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> *Johnson v. Risk,* 137 U. S. 300, 307;
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> *Lawrence v. State Tax Commission,* 286 U. S. 276, 282-283;
>
> *Adams v. Russell,* 229 U. S. 353, 358;
>
> *Woods v. Nierstheimier,* 328 U. S. 211;
>
> *Phyle v. Duffy,* 334 U. S. 431.

See also:

> *Williams v. Kaiser,* 323 U. S. 471, 477.

Petitioner submits that his case certainly meets the above test—and this Court therefore has jurisdiction. For, even assuming the existence of non-federal grounds in this case, the non-federal ground must be independent of the federal ground. "Where the non-federal ground is so interwoven with the other as not to be an independent matter . . . our jurisdiction is plain." (*Enterprise Irrigation District, supra.*)

III.

Conclusion.

The brief of respondent raises no basic reasons for denial of petition; on the contrary the burden of the argument of respondent would tend to support the petition of petitioner in his assertion that the actions of the respondent below constituted a denial of petitioner's constitutional rights.

Respectfully submitted,

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